HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.No.27155 of 2005

DATE: 03.09.2007

Between:

Mamidi Ram Murthy Naidu,
S/o Gowrunaidu

…. Petitioner

And:

Transmission Corporation of A.P. Ltd,
(A.P. TRANSCO), reptd. By its Chairman
& Managing Director, Vidyut Soudha,
Khairatabad, Hyderabad and 3 others

…. Respondents

ORDER:

This writ petition has been filed for a writ of Mandamus to declare the order in proceedings No.SAT/10363/SE/A/VSP/SKL/ D.SKL/ STPT/PF.807/D.No.3, dated 21.4.2005 of the respondent No.2 whereby he made a final assessment of the value of the electricity which was allegedly pilfered by the writ petitioner at Rs.1,42,499/-, as arbitrary, illegal and unconstitutional.

A perusal of the averments contained in the affidavit filed in support of the writ petition shows that the petitioner is a consumer of electricity and it holds an agreement with the respondents for this purpose. In the month of December, 2004 the officials of the respondents inspected the petitioner's premises and thereafter on 4.1.2005 another inspection was made. Following the said

inspections, respondent No.3 issued a notice on 6.1.2005 styling it as "provisional assessment notice", which contained certain incriminating points suggesting to the petitioner unlawfully abstracting the electricity supplied by the respondents.

Respondent No.2, after giving notice and opportunity to the petitioner, made a final assessment vide his proceedings dated 24.1.2005, wherein, as already stated hereinabove, he estimated the value of the electricity at Rs.1,42,499/-. Feeling aggrieved by the said proceedings, the petitioner filed the present writ petition.

The Assistant Engineer (Operation), A.P. Eastern Power Distribution Company Ltd., filed a counter affidavit wherein it was mentioned that the petitioner's service connection was inspected on 4.1.2005 by Assistant Divisional Engineer, D.P.E., Srikakulam and that during the said inspection it was found that there was a pin hole on the left side of the meter cover just 6cms from the top of the meter cover to the meter disc, that the meter was referred for testing to MRT lab and in the said test it was found that there are scratches on the bottom side of the disc and that based on the said incriminating points a provisional assessment notice was issued on 6.1.2005 and the same was served on the petitioner. It is also stated that respondent No.2 issued a show cause notice dated 19.1.2005 and after affording the petitioner an opportunity of filing his explanation and also of personal hearing on 19.4.2005, respondent No.2 had made a final assessment, which is impugned in this writ petition. It is also averred in the counter affidavit that the petitioner has got an efficacious alternative remedy by way of appeal against the final assessment order and that the writ petition is liable to be dismissed only on that ground.

Heard Sri D.V. Nagarjuna Babu, learned counsel for the petitioner and Sri T. Prabhu Das, learned counsel representing Sri V. Ajaykumar.

Learned counsel for the petitioner submitted that the final assessment made by respondent No.2 is *ex-facie* contrary to the statutory provisions envisaged under Section 126 of the Electricity Act, 2003 (for short 'the Act') and invited my attention to Section 126 (5) and (6) of the Act, which is reproduced below:

> **(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place.**
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> **(6) The assessment under this Section shall be made at a equal to one-and-half times the tariff rates applicable for the relevant category of services specified in sub-section (5).**

Learned counsel submitted that under Section 126 (5) & (6) of the Act, the period of assessment is to be limited to six months immediately preceding the date of inspection in respect of all categories of services other than agricultural and domestic services and that in the impugned assessment, respondent No.2 has taken into consideration a period of 10 months commencing from 1.4.2004 to 5.1.2005. He also submitted that while the tariff rate to be calculated was one and half times under the provisions of the Act, respondent No.2 has applied three times the tariff rate in making his assessment.

Learned counsel for the respondents has not disputed the aforementioned contention of the learned counsel for the petitioner that

respondent No.2 had deviated from the provisions of Section 126 (5) and (6) of the Act while taking into consideration, the period for which the assessment has been made and the tariff rate. He, however, contended that the petitioner has an efficacious alternative remedy by way of appeal under Section 127 of the Act. He, therefore, contended that there was no reason for the petitioner to bye-pass the efficacious alternative remedy of appeal and the writ petition is liable to be dismissed on that ground.

I have carefully considered the respective submissions of the learned counsel for the parties. Ordinarily, a writ Court would not entertain a petition filed bye-passing the remedy of appeal, which is generally considered as an efficacious alternative remedy except in cases where the orders were passed without jurisdiction or in violation of Principles of Natural Justice. Though this rule is in nature of a self-imposed restraint of the constitutional Courts and not as a rule of law, it is being strictly adhered to. But, however, in the instant case, I am not inclined to drive the petitioner to file the alternative remedy of appeal for the following reasons:

a) the writ petition is already admitted and pending for the last two years; and
b) the plea raised by the petitioner in the writ petition viz., respondent No.2 has made final assessment in blatant violation of the statutory mandate contained under Section 126 (5) and (6) is not disputed by the respondents

In the aforementioned circumstances, I deem it expedient to dispose of the writ petition on merits instead of relegating the petitioner to the remedy of appeal.

As already noted hereinabove, respondent No.2 has made the assessment in violation of the statutory provisions. Hence, the assessment order impugned in this writ petition is liable to be set aside. The writ petition is, accordingly, allowed remitting the matter to respondent No.2 to make a fresh assessment in terms of Section 126 (5) and (6). Till respondent No.2 makes a fresh assessment, the power supply shall not be disconnected to the petitioner's premises only on the ground of non-payment of the demanded amount under the impugned assessment order.

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C.V. NAGARJUNA REDDY, J

Date: 03.09.2007

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